INDEX

	PAGE
Summary Statement of the Matter Involved	2
Question Presented	4
Reasons Why Writ Should Not Be Allowed	5
Conclusion	8

TABLE OF CASES CITED

Aetna Life Ins. Co. v. Hoage, 76 F. 2d 435	7
Booth v. Monahan, 56 F. 2nd 168	7
Didier v. Crescent Wharf & Warehouse Co., 15 F. Supp. 91	7
Granholm v. Cardillo, 116 F. 2d 948	7
Luckenbach S. S. Co. v. Norton, 41 F. Supp. 105	7
Maryland Casualty Co. v. Cardillo, 104 F. 2d 254	7
Michigan Transit Corp. v. Brown, 26 F. 2d 200	6
Obrecht-Lynch Corp. v. Clark, 30 F. 2d 144	7
Zurich General Accident & Lia. Ins. Co. v. Marshall, 56 F. 2d 653	7

TEXT BOOK

Sullivan-Federal Rules of Civil Procedure, Section 1358	8

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1949.
No.

ANNA KWASIZUR, Administratrix of the Estate of Ignatius Kwasizur, Deceased,
Petitioner,

v.

FRANK A. CARDILLO, Deputy Commissioner, United States Employees Compensation Commission, MARITIME SHIP CLEANING AND MAINTENANCE COMPANY, Employer,
and
HARTFORD ACCIDENT AND INDEMNITY COMPANY, Insurance Carrier,
Respondents.

ANSWER OF RESPONDENTS, MARITIME SHIP CLEANING AND MAINTENANCE COMPANY AND HARTFORD ACCIDENT AND INDEMNITY COMPANY, CONTRA PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, NO. 9678.

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The answer of the Maritime Ship Cleaning and Maintenance Company, and The Hartford Accident and Indemnity Company, Respondents, respectfully represents:

This is an answer on behalf of the two respondents above named to the Petition of Anna Kwasizur, Administratrix of the Estate of Ignatius Kwasizur, deceased, for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit, to review judgment affirming judgment of the United States District Court for the Eastern District of Pennsylvania.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This claim arises under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1432. The decedent, Ignatius Kwasizur, on March 23, 1946, was in the employ of the Maritime Ship Cleaning and Maintenance Company and the liability of the said employer for compensation under the Act was insured by the Hartford Accident and Indemnity Company.

On that day Ignatius Kwasizur was engaged to perform certain duties as a ship cleaner aboard the S. S. "WILLARD HALL" in the Delaware River, off the Port of Philadelphia. There was a dispute among some of the employees as to which should operate certain winches and an argument ensued. A short time thereafter a member of the crew of the said vessel was the victim of an attempted theft of personal property. He grappled with the intruder and shortly thereafter Ignatius Kwasizur was found lying on the deck unconscious, suffering a fracture of the skull, with an open penknife alongside him.

On October 28, 1946, Ignatius Kwasizur died by his own hand and his widow, the plaintiff in this case, made claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Deputy Commissioner Cardillo, in rejecting the claim, found that the claimant's incapacity for work was not the

result of an accidental injury which arose out of and in the course of his employment. The plaintiff appealed from the action of the Deputy Commissioner, rejecting the claim, to the District Court for the Eastern District of Pennsylvania.

The defendants, Maritime Ship Cleaning Company and Hartford Accident and Indemnity Company, filed Motion to Dismiss the Bill of Complaint, which was heard before Peirson M. Hall, J., Specially Presiding. The Court vacated the Order of the Commissioner, rejecting compensation and remanded the case, with directions that the Commissioner calculate and make an Award of compensation.

The defendant, Frank A. Cardillo, Deputy Commissioner, United States Employees Compensation Commission, was not present, nor was he heard in person, nor by Counsel, at the hearing of the Motion to Dismiss, before Judge Hall.

On Motion for re-hearing, the case was reargued before James P. McGranery, J., who reversed the decree of Judge Hall, vacated the judgment entered by him and denied the plaintiff's application to set aside the Order of the Deputy Commissioner.

The plaintiff appealed to the United States Circuit Court of Appeals for the Third Circuit, and after argument, the Court, in an opinion filed April 28, 1949, affirmed the judgment of the District Court.

QUESTION PRESENTED.

Was the Deputy Commissioner, who heard the Petitioner's claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act, legally justified in disbelieving the claimant's testimony; in accepting the testimony of a detective who investigated the case, and in rejecting the claim?

(*Affirmed by the District Court and by the Circuit Court of Appeals for the Third Circuit.*)

REASONS WHY WRIT SHOULD NOT BE ALLOWED.

The defendant produced, at the hearing before the Deputy Commissioner, Detective Arthur G. Munn, of the Second Detective Division of Philadelphia. Officer Munn stated that on the day of the accident, March 23, 1946, he was detailed to investigate the occurrence on the S. S. "Willard Hall," which lay midstream, off Cambria Street, Philadelphia, Pennsylvania. Upon going aboardship he found plaintiff's decedent, Ignatius Kwasizur, had received serious injuries and had been removed to the Hospital.

He questioned the crew of the boat, including an oiler named William Noblitt, one of the ship's personnel. This interview disclosed that Noblitt was lying in his lower bunk with the lights out and the curtain drawn, his pants hanging alongside his bunk. He heard a noise and saw a hand reaching for his pants. He jumped up and saw Ignatius Kwasizur with his hand in the pocket of his (Noblitt's) pants. They struggled and Kwasizur pulled a penknife out of his pocket, which caused Noblitt to release his hold for a moment. Kwasizur freed himself and ran down the passageway. Noblitt gave chase, hollering for help, and down the passageway he found Kwasizur lying face down on the side of the bulkhead, alongside of him an open penknife.

Another Officer of the Philadelphia Detective Bureau later interviewed Kwasizur, who explained that he was struck by an Italian with an iron pipe. He identified this man as one Brocco, also employed on the ship, and Brocco was arrested. But when Kwasizur was confronted with this man, he said that Brocco was not the man.

The defendant, before the Deputy Commissioner, also called Kwasizur's foreman, who testified that he learned that a seaman had accused Kwasizur of attempting to rob

him. That he saw Kwasizur lying on the deck, alongside of a hatch, and that he picked up a penknife which was lying beside him.

Kwasizur admitted that, previous to this occurrence, he had been a drug addict and that at the time he was a parolee.

Herbert F. Goodrich, J., in writing the opinion of the Circuit Court, reviewed the testimony of Kwasizur, in which Kwasizur said that he stumbled and fell upon the deck while moving from one winch to another in the course of his employment, and that his sole supporting witness was seriously discredited and his foreman "did not help him much." The Court, in commenting upon this testimony, stated:

> "Suppose the case had stopped right here and that no one else had offered any testimony. Could a finding by the Deputy Commissioner that the injury was not suffered in the course of employment be sustained? We think undoubtedly it could. As already stated, a corroborating witness's testimony was shot all to pieces in cross-examination and a reading of the foreman's testimony really does not strengthen Kwasizur's case. As for Kwasizur, himself, it could hardly be claimed that the Deputy Commissioner was bound to accept the truth of the story, even though it were not contradicted, if it seemed to him, as the trier of facts, an improbable one. We think, therefore, if no further testimony had been presented, except that offered on behalf of the claimant, the finding against him could not be disturbed by a Court" (p. 3).

These defendants contend that not only was the Deputy Commissioner within his legal rights in disbelieving Kwasizur's testimony, which was at least in part contradicted by his own witnesses, but that his findings of fact on this subject were conclusive, when based on logical deductions and inferences drawn from direct testimony. MICHIGAN TRANSIT CORP. v. BROWN, 26 F. 2d 200. And that a

Commissioner's findings are final, if supported by competent evidence.

OBRECHT-LYNCH CORP. v. CLARK, 30 F. 2d 144;
BOOTH v. MONAHAN, 56 F. 2d 168, and,
AETNA LIFE INS. CO. v. HOAGE, 76 F. 2d 435.

It has been repeatedly held that a Deputy Commissioner's findings of fact are final and conclusive if supported by substantial evidence.

DIDLER v. CRESCENT WHARF & WAREHOUSE CO., 15 F. Supp. 91;
ZURICH GENERAL ACCIDENT & LIA. INS. CO. v. MARSHALL, 56 F. 2d 653;
LUCKENBACH S. S. CO. v. NORTON, 41 F. Supp. 105.

And it has been held that a Deputy Commissioner's findings are conclusive if supported by substantial evidence, even though an Appellate Court may have reached a different conclusion.

MARYLAND CASUALTY CO. v. CARDILLO, 104 F. 2d 254;
GRANHOLM v. CARDILLO, 116 F. 2d 948.

CONCLUSION.

It is respectfully submitted that this is not a case in which the Circuit Court of Appeals has rendered a decision in conflict with a decision of another Circuit Court of Appeals on the same matter, nor has it decided any important question of Federal law, which has not been, but should be, settled by the Supreme Court, nor has it decided a Federal question in a way probably in conflict with the applicable decisions of the Supreme Court, nor has it so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court as to call for an exercise of the power or supervision of the Supreme Court. (A treatise on the Federal Rules of Civil Procedure—Sullivan, Section 1358.)

It is therefore respectfully requested that the Certiorari be refused.

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time Ship Cleaning and Maintenance Company, and Hartford
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